states will construe the acts liberally so as to bring their own decisions into accord. Not till then will there be actual uniformity of law.

IS A MAN'S ILLEGAL PLACE OF BUSINESS HIS CASTLE? — Although under the early law a plea of self-defense to a charge of homicide could not be availed of, and the jury were allowed to convict, leaving the prisoner to the mercy of the king, it gradually came to pass that the plea was accepted as a valid legal defense.[1] As the killing is not in self-defense, unless it reasonably appears to the assailed that there is no other way of saving his life[2] the assailed must "retreat to the wall" before any right of self-defense can arise. Such is the law in many jurisdictions to-day.[3]

But from the earliest times there has been something sacred about the dwelling house. "A man's house is his castle" is not an overstatement of the rights of the householder.[4] His house is more than his castle; it is his "wall" from which he has no duty to retreat when attacked.[5] Although there are conflicting statements in the books, the doctrine that a man when assailed in his own house, rather than flee, may kill to save his life, is probably not based on the theory that the homicide is justifiable as preventing an attack on property, but that it is excusable because committed in self-defense.[6] What the householder is protecting is

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[1] In a case in Y. B. 4 HEN. VII, 2, the bar claimed that a pardon was unnecessary, but the justices were of a contrary opinion. In Y. B. 26 HEN. VIII, 5, the prisoner was released without a pardon. See Professor Beale's article, "Retreat from a Murderous Assault," 16 HARV. L. REV. 567–573; also 2 POLLOCK AND MAITLAND, HISTORY OF ENGLISH LAW, 476–483.

[2] See charges to jury, Regina *v.* Symondson, 60 J. P. 645; Regina *v.* Smith, 8 C. & P. 160.

[3] Allen *v.* United States, 164 U. S. 492, 497; State *v.* Donelly, 69 Ia. 705, 27 N. W. 369; State *v.* Rheams, 34 Minn. 18, 24 N. W. 302. See Keith *v.* State, 97 Ala. 32, 11 So. 914. See also 4 BL. COM. 185, "The party assaulted must therefore flee as far as he conveniently can, either by reason of some wall, ditch, or other impediment; or as far as the fierceness of the assault will permit him."

[4] See 1 HALE P. C. 487, "For his house is his castle of defense." Meade's and Belt's case, 1 Lewin C. C. 184, 185, Holroyd, J. (charging jury), "for a man's house is his castle, and therefore in the eye of the law it is equivalent to an assault."

[5] Alberty *v.* United States, 162 U. S. 499, 505; People *v.* Tomlins, 213 N. Y. 240, 107 N. E. 496; Brinkley *v.* State, 89 Ala. 34, 8 So. 22; State *v.* Patterson, 45 Vt. 308, 318; Elder *v.* State, 69 Ark. 648, 657, 65 S. W. 938, 941; People *v.* Newcomer, 118 Cal. 263, 272, 50 Pac. 405, 409; People *v.* Lewis, 117 Cal. 186, 193, 48 Pac. 1088, 1090; State *v.* Middleham, 62 Ia. 150, 154, 17 N. W. 446, 447; Estep *v.* Commonwealth, 86 Ky. 39, 4 S. W. 820; Wright *v.* Commonwealth, 85 Ky. 123, 132, 2 S. W. 904, 908; State *v.* O'Brien, 18 Mont. 1, 11, 43 Pac. 1091, 1093. See Regina *v.* Symondson, 60 J. P. 645. See also Prof. Beale, "Retreat from a Murderous Assault," 16 HARV. L. REV. 567, 579; Prof. Beale, "Homicide in Self-defense," 3 COL. L. REV. 526, 540. The doctrine that a man's house is his castle has been extended in a few jurisdictions in the United States to cover not only the house itself, but also the surrounding premises. Beard *v.* United States, 158 U. S. 550, 559; Baker *v.* Commonwealth, 93 Ky. 302, 19 S. W. 975; Naugher *v.* State, 105 Ala. 26, 17 So. 24. See Rex *v.* Scully, 1 C. & P. 319. But see Thomas *v.* State, 69 So. 315 (Ala.)

[6] Bracton speaks as if homicide in warding off a murderous attack in the dwelling house was justifiable rather than excusable. "*Item erit si quis Hamsokne quae dicitur invasio domus, contra pacem domini regis in domo sua se defenderit, et invasor occisus fuerit, impersecutus et inultus remanebit, si ille quem invasit aliter se defendere non potuit, dicitur enim quod non est dignus habere pacem qui non vult observare eam.*" BRACTON, F 144 *b*. This seems to imply that reasons other than self-defense are be-

not the house but his own life. So where the doctrine has been held to cover a man's place of business the same principles should apply.[7]

Yet in a recent case the Alabama Supreme Court held that where a man is attacked at his illegal liquor still, he is bound to retreat. *Hill* v. *State*, 69 So. 941, 946 (Ala.).[8] It was said that because the business is illegal the owner has no legal right on the premises. But the illegality of a business does not abrogate the owner's rights in this respect; and if a man's place of business is as much his castle as his dwelling house, he has, as against private persons, a legal right there whether or not the business is unlawful.[9] However, the decision in the principal case may perhaps be due to a revulsion of feeling against the view held in many jurisdictions that one man's "honor" is worth more than another's life — a doctrine which is the logical result of denying that there is any duty to retreat when one is attacked in a place where he has a legal right to be.[10] That one man may stand on his rights at the expense of another's life is a doctrine which, although it finds some support in continental law, seems contrary to the principles of the common law and to modern ideas concerning the sacredness of human life.[11] After all, it may well

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hind the exception. But it is clear that homicide in defense of the house was not considered justifiable unless the attack was felonius. See 1 HALE P. C. 487; 4 BL. COM. 180. And the right of the assailed to stand his ground in his own house is therefore a right of self-defense merely. See 1 HALE P. C. 486; Rex *v.* Scully, 1 C. & P. 319; State *v.* Patterson, 45 Vt. 308, 320; Prof. Beale, "Homicide in Self-defense," 3 COL. L. REV. 526, 541.

[7] Many American jurisdictions have held the right of self-defense to be the same in the place of business as it is in the dwelling house. Askew *v.* State, 94 Ala. 4, 10 So. 657 (livery stable); Willis *v.* State, 43 Neb. 102, 114, 61 N. W. 254, 258 (saloon); Bean *v.* State, 25 Tex. App. 346, 357, 8 S. W. 278, 279 (cotton gin); Sparks *v.* Commonwealth, 89 Ky. 644, 651, 20 S. W. 167, 168 (store); Tingle *v.* Commonwealth, 11 Ky. L. Rep. 224, 11 S. W. 812 (office); Foster *v.* Territory, 56 Pac. 738 (Ariz.) (saloon). See Morgan *v.* Durfee, 69 Mo. 469, 479 (office). But see *contra*, Hall *v.* Commonwealth, 94 Ky. 322, 325, 22 S. W. 333, 334 (grocery store); State *v.* Smith, 100 Ia. 1, 6, 69 N. W. 269, 270 (store). The fact that the parties are coöwners is not important. Jones *v.* State, 76 Ala. 8, 16. A servant's right is probably as good as the owner's. See Stevens *v.* State, 138 Ala. 71, 83, 35 So. 122, 126; Perry *v.* State, 94 Ala. 25, 10 So. 650.

[8] The defendant and the deceased were joint owners of the still. The refusal of the trial court to give a charge omitting reference to the duty to retreat was sustained by the Supreme Court.

[9] In People *v.* Rector, 19 Wend. (N. Y.) 569, the defendant conducted a bawdy house, where he also resided. The court (p. 591) said that though the business was illegal, the house was nevertheless the defendant's castle.

[10] Runyan *v.* State, 57 Ind. 80; Foster *v.* State, 8 Okla. Cr. 139, 150, 126. Pac. 835, 839; La Rue *v.* State, 64 Ark. 144, 41 S. W. 53; State *v.* Petteys, 65 Kan. 625, 70 Pac. 588. See State *v.* Bartlett, 170 Mo. 658, 668, 71 S. W. 148, 151; Hammond *v.* People, 199 Ill. 173, 182, 64 N. E. 980, 983; Fowler *v.* State, 8 Okla. Cr. 130, 135, 126 Pac. 831, 833. For a vigorous criticism of this doctrine, see Prof. Beale, "Retreat From a Murderous Assault," 16 HARV. L. REV. 567, 576–582.

[11] The German law is that there is no duty to retreat unless the assailant is irresponsible, as in such case to retreat would be without "shame." The reasoning is that an innocent man's rights should not be restricted in favor of a wrongdoer ("Wie dürfte zur Schonung eines solchen Angreifers der Angegriffene in der Freiheit seines Tuns und Lassens beschränkt werden?"). See VERGLEICHENDE DARSTELLUNG DES DEUTSCHEN UND AUSLÄNDISCHEN STRAFRECTHS, 266–267, 281–283. In France there is no right of self-defense if there is any other way out *except by flight*. It appears in general that on the continent there is no duty to retreat and the tendency is to give the assailant fewer concessions. See 2 VERGLEICHENDE DARSTELLUNG DES DEUTSCHEN

be more honorable to flee, when consistent with safety, than to kill; and it is not always cowardly, in resisting the impulses of the native blood, to be too proud to fight.

Although the doctrine that the dwelling house may be a fortress of defense is perhaps a survival from feudal times, it is firmly imbedded in our law to-day. But it is submitted that the extension of this exception to the "duty-to-retreat" rule to cover the place of business has been unwise, and should be strictly limited. In a sparsely settled country it is indeed monstrous that a man should be forced to flee from his home, but under conditions of average city life to-day there is less justification for the "castle" doctrine; and the conception of one being forced to run from his office or saloon rather than kill an assailant fails to shock excessively. It is rather more shocking to contemplate the possibility of the rule as to the duty to retreat being eaten up by the exception. Therefore, the Alabama decision is commendable in limiting the asserted right of one who is attacked to stand his ground at all costs.

RECENT CASES

ADMIRALTY — TORTS — APPLICATION OF GENERAL AVERAGE TO LIABILITY FOR A TORT COMMITTED IN SAVING THE SHIP. — The plaintiff's ship was in imminent danger of sinking, and the master was obliged to run her against a dock, as an alternative to running her aground, which would probably have involved even greater loss. The plaintiffs, having been forced to pay for the damage to the dock, now sue the owners of the cargo for a general average contribution to this payment. *Held*, that they may recover. *Austin Friars Steamship Co.* v. *Spillers & Baker*, [1915] 3 K. B. 586.

General average includes only the expenses incurred as a result of a voluntary act of the master in saving the ship or cargo from extraordinary perils. See *The Star of Hope*, 9 Wall. (U. S.) 203, 228. The tendency of the courts is to give large latitude to the master's judgment, provided only he acts reasonably in the emergency. *Shepherd* v. *Kottgen*, 2 C. P. D. 578; *Norwich & N. Y. Transportation Co.* v. *Insurance Co. of North America*, 118 Fed. 307. And a contribution is allowed for even consequential results of a general average act. Thus contribution was allowed for the losses of an unadvantageous sale of cattle forced by the entering of a quarantined port for repairs. *Anglo-Argentine, etc. Agency* v. *Temperley Shipping Co.*, [1899] 2 Q. B. 403. And where water used to extinguish a fire caused the grain in the cargo to swell, a general average contribution was allowed for damage thereby resulting to the ship. *Lee* v. *Grinnell*, 5 Duer (N. Y.) 400, 427. It is clear, therefore, that the tort liability in the principal case was a proper subject of general average. The case also involves a contribution between joint tortfeasors, since the master acted as agent of the owners of both the ship and cargo. *Anglo-Argentine, etc. Agency* v. *Temperley Shipping Co.*, *supra*, 409. See *Ralli* v. *Troop*, 157 U. S. 386, 420. Such a contribution is generally allowed in admiralty. See *The Sterling & The Equator*, 106 U. S. 647. See 24 HARV. L. REV. 150. Even at

UND AUSLÄNDISCHEN STRAFRECHTS, 303–327. The common-law point of view is well expressed by Blackstone: "And though it may be cowardice in time of war between two independent nations to flee from an enemy, yet between twofellow subjects the law countenances no such point of honor." 4 BL. COM. 185.